

IC 35-44

**ARTICLE 44. OFFENSES AGAINST PUBLIC
ADMINISTRATION**

IC 35-44-1

Chapter 1. Bribery, Conflict of Interest, and Official Misconduct

IC 35-44-1-1

Bribery

Sec. 1. (a) A person who:

- (1) confers, offers, or agrees to confer on a public servant, either before or after the public servant becomes appointed, elected, or qualified, any property except property the public servant is authorized by law to accept, with intent to control the performance of an act related to the employment or function of the public servant;
- (2) being a public servant, solicits, accepts, or agrees to accept, either before or after he becomes appointed, elected, or qualified, any property, except property he is authorized by law to accept, with intent to control the performance of an act related to his employment or function as a public servant;
- (3) confers, offers, or agrees to confer on a person any property, except property the person is authorized by law to accept, with intent to cause that person to control the performance of an act related to the employment or function of a public servant;
- (4) solicits, accepts, or agrees to accept any property, except property he is authorized by law to accept, with intent to control the performance of an act related to the employment or function of a public servant;
- (5) confers, offers, or agrees to confer any property on a person participating or officiating in, or connected with, an athletic contest, sporting event, or exhibition, with intent that the person will fail to use his best efforts in connection with that contest, event, or exhibition;
- (6) being a person participating or officiating in, or connected with, an athletic contest, sporting event, or exhibition, solicits, accepts, or agrees to accept any property with intent that he will fail to use his best efforts in connection with that contest, event, or exhibition;
- (7) being a witness or informant in an official proceeding or investigation, solicits, accepts, or agrees to accept any property, with intent to (i) withhold any testimony, information, document, or thing, (ii) avoid legal process summoning him to testify or supply evidence, or (iii) absent himself from the proceeding or investigation to which he has been legally summoned; or
- (8) confers, offers, or agrees to confer any property on a witness or informant in an official proceeding or investigation, with intent that the witness or informant (i) withhold any testimony,

information, document, or thing, (ii) avoid legal process summoning the witness or informant to testify or supply evidence, or (iii) absent himself from any proceeding or investigation to which the witness or informant has been legally summoned;

commits bribery, a Class C felony.

(b) It is no defense that the person whom the accused person sought to control was not qualified to act in the desired way.

As added by Acts 1976, P.L.148, SEC.4. Amended by Acts 1977, P.L.340, SEC.53.

IC 35-44-1-2

Official misconduct

Sec. 2. A public servant who:

(1) knowingly or intentionally performs an act that he is forbidden by law to perform;

(2) performs an act he is not authorized by law to perform, with intent to obtain any property for himself;

(3) knowingly or intentionally solicits, accepts, or agrees to accept from his appointee or employee any property other than what he is authorized by law to accept as a condition of continued employment;

(4) knowingly or intentionally acquires or divests himself of a pecuniary interest in any property, transaction, or enterprise or aids another person to do so based on information obtained by virtue of his office that official action that has not been made public is contemplated;

(5) knowingly or intentionally fails to deliver public records and property in his custody to his successor in office when that successor qualifies; or

(6) knowingly or intentionally violates IC 36-6-4-17(b);

commits official misconduct, a Class A misdemeanor.

As added by Acts 1976, P.L.148, SEC.4. Amended by Acts 1977, P.L.340, SEC.54; Acts 1980, P.L.73, SEC.2; P.L.34-1992, SEC.2.

IC 35-44-1-3

Conflict of interest

Sec. 3. (a) A public servant who knowingly or intentionally:

(1) has a pecuniary interest in; or

(2) derives a profit from;

a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D felony.

(b) This section does not prohibit a public servant from receiving compensation for:

(1) services provided as a public servant; or

(2) expenses incurred by the public servant as provided by law.

(c) This section does not prohibit a public servant from having a pecuniary interest in or deriving a profit from a contract or purchase connected with the governmental entity served under any of the

following conditions:

- (1) If the:
 - (A) public servant is not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity;
 - (B) functions and duties performed by the public servant for the governmental entity are unrelated to the contract or purchase; and
 - (C) public servant makes a disclosure under subsection (d)(1) through (d)(6).
 - (2) If the contract or purchase involves utility services from a utility whose rate structure is regulated by the state or federal government.
 - (3) If the public servant:
 - (A) is an elected public servant or a member of the board of trustees of a state supported college or university; and
 - (B) makes a disclosure under subsection (d)(1) through (d)(6).
 - (4) If the public servant:
 - (A) was appointed by an elected public servant or the board of trustees of a state supported college or university; and
 - (B) makes a disclosure under subsection (d)(1) through (d)(7).
 - (5) If the public servant:
 - (A) acts in only an advisory capacity for a state supported college or university; and
 - (B) does not have authority to act on behalf of the college or university in a matter involving a contract or purchase.
 - (6) If the public servant:
 - (A) is employed by the governing body of a school corporation and the contract or purchase involves the employment of a dependent or the payment of fees to a dependent; and
 - (B) makes a disclosure under subsection (d)(1) through (d)(6).
 - (7) If the public servant is under the jurisdiction of the state ethics commission as provided in IC 4-2-6-2.5 and obtains from the state ethics commission, following full and truthful disclosure, written approval that the public servant will not or does not have a conflict of interest in connection with the contract or purchase under IC 4-2-6 and this section. The approval required under this subdivision must be:
 - (A) granted to the public servant before action is taken in connection with the contract or purchase by the governmental entity served; or
 - (B) sought by the public servant as soon after the contract or purchase as the public servant becomes aware of the facts that give rise to a question of conflict of interest.
- (d) A disclosure required by this section must:
- (1) be in writing;

- (2) describe the contract or purchase to be made by the governmental entity;
- (3) describe the pecuniary interest that the public servant has in the contract or purchase;
- (4) be affirmed under penalty of perjury;
- (5) be submitted to the governmental entity and be accepted by the governmental entity in a public meeting of the governmental entity prior to final action on the contract or purchase;
- (6) be filed within fifteen (15) days after final action on the contract or purchase with:

- (A) the state board of accounts; and

- (B) if the governmental entity is a governmental entity other than the state or a state supported college or university, the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase; and

- (7) contain, if the public servant is appointed, the written approval of the elected public servant (if any) or the board of trustees of a state supported college or university (if any) that appointed the public servant.

(e) The state board of accounts shall forward to the state ethics commission a copy of all disclosures filed with the board under IC 16-22-2 through IC 16-22-5, IC 16-23-1, or this section.

(f) The state ethics commission shall maintain an index of all disclosures received by the commission. The index must contain a listing of each public servant, setting forth the disclosures received by the commission made by that public servant.

(g) A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of:

- (1) the public servant; or

- (2) a dependent of the public servant who:

- (A) is under the direct or indirect administrative control of the public servant; or

- (B) receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant.

(h) It is a defense in a prosecution under this section that the public servant's interest in the contract or purchase and all other contracts and purchases made by the governmental entity during the twelve (12) months before the date of the contract or purchase was two hundred fifty dollars (\$250) or less.

(i) Notwithstanding subsection (d), a member of the board of trustees of a state supported college or university, or a person appointed by such a board of trustees, complies with the disclosure requirements of this chapter with respect to the member's or person's pecuniary interest in a particular type of contract or purchase which is made on a regular basis from a particular vendor if the member or person files with the state board of accounts and the board of trustees a statement of pecuniary interest in that particular type of contract or

purchase made with that particular vendor. The statement required by this subsection must be made on an annual basis.

(j) This section does not apply to members of the governing board of a hospital organized or operated under IC 16-22-1 through IC 16-22-5 or IC 16-23-1.

(k) As used in this section, "dependent" means any of the following:

(1) The spouse of a public servant.

(2) A child, stepchild, or adoptee (as defined in IC 31-9-2-2) of a public servant who is:

(A) unemancipated; and

(B) less than eighteen (18) years of age.

(3) Any individual more than one-half (1/2) of whose support is provided during a year by the public servant.

As added by Acts 1978, P.L.144, SEC.7. Amended by Acts 1981, P.L.304, SEC.1; P.L.329-1983, SEC.1; P.L.66-1987, SEC.28; P.L.13-1987, SEC.16; P.L.183-1988, SEC.1; P.L.109-1988, SEC.3; P.L.197-1989, SEC.3; P.L.2-1993, SEC.185; P.L.22-1995, SEC.3; P.L.1-1997, SEC.149.

IC 35-44-1-4 Repealed

(Repealed by P.L.329-1983, SEC.2.)

IC 35-44-1-5

Sexual misconduct by service provider with detainee

Sec. 5. (a) As used in this section, "service provider" means a public servant or other person employed by a governmental entity or another person who provides goods or services to a person who is subject to lawful detention.

(b) A service provider who knowingly or intentionally engages in sexual intercourse or deviate sexual conduct with a person who is subject to lawful detention commits sexual misconduct, a Class D felony.

(c) It is not a defense that an act described in subsection (b) was consensual.

(d) This section does not apply to sexual intercourse or deviate sexual conduct between spouses.

As added by P.L.324-1987, SEC.1.

IC 35-44-1-7

Profiteering from public service; pecuniary interest; application

Sec. 7. (a) As used in this section, "pecuniary interest" has the meaning set forth in section 3(g) of this chapter.

(b) A person who knowingly or intentionally:

(1) obtains a pecuniary interest in a contract or purchase with an agency within one (1) year after separation from employment or other service with the agency; and

(2) is not a public servant for the agency but who as a public servant approved, negotiated, or prepared on behalf of the agency the terms or specifications of:

(A) the contract; or

(B) the purchase;

commits profiteering from public service, a Class A infraction.

(c) This section does not apply to negotiations or other activities related to an economic development grant, loan, or loan guarantee.

(d) This section does not apply if the person receives less than two hundred fifty dollars (\$250) of the profits from the contract or purchase.

(e) It is a defense to a prosecution under this section that:

(1) the person was screened from any participation in the contract or purchase;

(2) the person has not received a part of the profits of the contract or purchase; and

(3) notice was promptly given to the agency of the person's interest in the contract or purchase.

As added by P.L.13-1987, SEC.17. Amended by P.L.9-1990, SEC.15.